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November 3, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20554

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NOV 3 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 00-176

Dear Ms. Salas:

Pursuant to the Commission's Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice Nos. FCC 96-469, 97-330, and DA 00-2159, we are enclosing the following:

- One original and two copies of a redacted Reply (in paper form). The Reply consists of two parts: (1) Reply Comments in support of the Application; and (2) supporting declarations.
- One copy of the Reply Comments and supporting declarations on CD ROM.
- Five additional copies of the redacted Reply Comments (in paper form), so that each Commissioner may have a copy.

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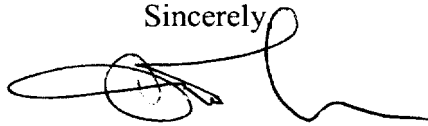
- One original of only the portions of the Reply that contain confidential information (in paper form). A copy of this letter will also accompany that version of the Reply.

Please date-stamp the extra copy of this letter and return it to the individual delivering this package.

We are also submitting under separate cover copies (redacted as appropriate) of the Reply to Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20554. Copies are also being submitted to the Department of Justice, to the Massachusetts DTE, and to ITS (the Commission's copy contractor).

If you have any questions, please call me at 202-326-7930.

Sincerely

A handwritten signature in black ink, appearing to be "Evan Leo", with a large, stylized loop at the end.

Evan Leo

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
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Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),) CC Docket No. 00-176
NYNEX Long Distance Company)
(d/b/a Verizon Enterprise Solutions),)
and Verizon Global Networks Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in Massachusetts)

REPLY COMMENTS OF VERIZON IN SUPPORT OF APPLICATION BY
VERIZON NEW ENGLAND FOR AUTHORIZATION TO PROVIDE IN-REGION,
INTERLATA SERVICES IN MASSACHUSETTS

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November 3, 2000

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(Performance Measurements)
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- Tab 5: Reply Declaration of Maura C. Breen
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INTRODUCTION AND SUMMARY

The Massachusetts Department of Telecommunications and Energy (“DTE”) has affirmed unambiguously that Verizon-Massachusetts “has met the requirements of § 271(c) of the Telecommunications Act of 1996 . . . and that the local exchange market in Massachusetts is irreversibly open to competition.” DTE Eval. at 1. The Massachusetts DTE conducted an investigation of Verizon’s compliance with section 271 that lasted “over 16 months,” that “was open to participation by all interested parties,” and that included “almost 30 days of technical sessions, over a thousand information and record requests, and thousands of pages of filings and testimony.” *Id.* at i. At the conclusion of this extensive investigation, the DTE prepared “a detailed analysis of Verizon’s compliance,” *id.* at ii, in which it “recommends that the FCC approve Verizon’s application to offer long distance services in the Commonwealth of Massachusetts,” *id.* at iii.

The Massachusetts DTE’s findings are supported unequivocally by independent auditor KPMG, which “under the supervision of the [DTE]” conducted a “comprehensive OSS test” that “analyzed and verified Verizon’s performance in 804 individual test points across five test domains.” *Id.* at ii. The KPMG test “culminat[ed] in a 700-page report” that, according to the DTE, “demonstrates that Verizon’s OSS provide the functions required by § 271.” *Id.* These findings are hardly surprising, of course, because the systems and processes that Verizon uses in Massachusetts are functionally identical to those used in New York, and which this Commission previously found satisfy the Competitive Checklist. See New York Order ¶ 82.

The Department of Justice (“DOJ”) also has agreed with virtually all of the Massachusetts DTE’s conclusions. With respect to two of the three entry paths specified by the 1996 Act — facilities-based competition and resale — the DOJ gives Verizon a nearly flawless

report card. It concludes that “opportunities to serve business customers by facilities-based carriers and resellers are fully available in Massachusetts, based on the substantial and successful entry efforts reflected in Verizon’s application.” DOJ Eval. at 7. And it concludes that, except for “one possible” concern involving access to poles that it has not been able to evaluate (but that the DTE has), the same opportunities exist for residential customers. Id.

The DOJ also has given Verizon a clean bill of health on virtually all aspects of its performance with respect to the 1996 Act’s third entry path — unbundled elements — and expresses concerns about only one subset of one checklist item. The DOJ states that, based on the “record at this time,” it “has not been able to determine whether . . . Verizon is providing nondiscriminatory performance” with respect to access to DSL loops. Id. at 13, 24.

Significantly, however, the DOJ does not suggest that the Commission could not find Verizon in compliance based on a more complete record than the one the DOJ itself has reviewed. In fact, the DOJ leaves open the possibility that Verizon could make “such a demonstration.” Id. at 3.

These Reply Comments make that showing. Verizon demonstrates that the DOJ’s concerns generally rely on inaccurate and misleading statements presented by Verizon’s opponents. Moreover, to the extent the DOJ expresses concerns about a small number of performance measures, we further demonstrate that those isolated measures are affected by the CLECs’ own behavior and do not reflect discriminatory performance by Verizon. And the DOJ fails to consider these isolated concerns in the context of Verizon’s overall performance, which is excellent.

The Massachusetts DTE has indeed reached these very same conclusions based upon a full record amassed over more than 16 months. The DTE’s conclusions are obviously correct. The Commission should grant this application.

I. VERIZON SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN MASSACHUSETTS.

The Commission has held that, “given the 90-day statutory deadline to reach a decision on a section 271 application,” it will rely on the state commission in the affected state to build a factual record and undertake a detailed analysis of compliance with the Competitive Checklist. New York Order ¶ 51.¹ This practice is rooted firmly in the 1996 Act, which gives to state commissions the role of “verify[ing] the compliance of the Bell operating company with the requirements of” the Checklist, and which instructs this Commission to consult with state commissions regarding their determination. 47 U.S.C. § 271(d)(2)(B).

This Commission has stated that, where a state commission makes a determination of Checklist compliance based on a detailed and extensive record, it will accord those determinations great weight in evaluating a Bell company’s long distance application. The Commission has consistently taken this position since the 1996 Act was passed.² And it followed this approach in the two most recent section 271 orders, where it accorded “substantial weight” to the state commission determinations based on their “exhaustive and rigorous

¹ Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) (“New York Order”).

² See, e.g., Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶ 9 (1998) (“First Louisiana Order”) (“the Commission will consider carefully state determinations of fact that are supported by a detailed and extensive record”); Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 29 (1997) (“South Carolina Order”) (same).

investigation into the BOC's compliance with the checklist." New York Order ¶ 51, and "the extent of expertise . . . on section 271 issues" they had developed. Texas Order ¶ 4.³

The DTE has conducted a rigorous review of Verizon's Checklist compliance that is entitled to maximum deference under the Commission's well-settled precedent. The DTE's investigation lasted "over 16 months," which does not even include "the extensive work the Department has done in implementing the requirements of the Act, ever since its passage on February 8, 1996." DTE Eval. at i. The investigation was "open to participation by all interested parties" and "included five days of public hearings across Massachusetts, almost 30 days of technical sessions, over a thousand information and record requests, and thousands of pages of filings and testimony." Id. And, of course, the DTE supervised "a comprehensive OSS test, conducted by a third-party evaluator, KPMG Consulting," which "analyzed and verified Verizon's performance in 804 individual test points" and "culminat[ed] in a 700-page report." Id. at ii; see New York Order ¶ 20; Texas Order ¶ 11. Based on this "lengthy, rigorous and open" investigation, Texas Order ¶ 11, the DTE determined that Verizon "has met its obligations under § 271 of the Act," DTE Eval. at i.

The DOJ agrees in virtually all respects with the DTE's assessment, with only one notable exception regarding Verizon's performance in providing xDSL-capable loops. On this issue, the DOJ stated that it "has not been able to determine whether . . . Verizon is providing nondiscriminatory performance." DOJ Eval. at 13. The DOJ did not close the door based on its own inability to reach a conclusion, noting instead that "[i]t is our hope that the MA DTE can

³ See Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, CC Docket No. 00-65 (rel. June 30, 2000) ("Texas Order").

provide further clarification on these issues.” Id. at 8-9 n.30. As discussed below, however, the DTE already has provided an ample record on this issue. Accordingly, as the Commission has held in the past, it “may conclude that the evidence submitted by a state commission is more persuasive than that submitted by the Department of Justice, particularly if the state has conducted a rigorous analysis of the evidence.” New York Order ¶ 51.

A. xDSL-Capable Loop Performance.

Verizon’s overall performance providing unbundled loops is excellent, and no commenter seriously disputes this fact. Instead, the DOJ and other commenters focus on the limited subset of unbundled loops that are used to provide DSL service. Their concerns are uniformly misplaced, however.

As demonstrated in the application, Verizon is providing competitors with a large and rapidly increasing number of DSL loops, and is doing so on time in the intervals that competitors request. The DTE has confirmed that “VZ-MA is performing as a wholesale provider should. It gives CLEC customers the service they request.” DTE Eval. at 306. Even Covad — which was “the only carrier that continues to make specific claims about VZ-MA’s provisioning performance” in the state proceedings, id. at 302 — has conceded as much outside of regulatory forums. In reporting its first quarter earnings, Covad told analysts that it was “getting great results” from Verizon.⁴ More recently, in reporting its second quarter results, Covad’s CEO stated that “I will give [Verizon] a lot of credit. They have done a wonderful job. I would highly commend Ivan Seidenberg’s organization for really stepping up.”⁵ Although Covad now

⁴ Transcript of Covad’s 2000 First Quarter Earnings Release Conference Call at 29-30 (Apr. 18, 2000).

⁵ Interview with Robert Knowling, Jr. on RadioWallStreet.Com at 6 (Oct. 6, 2000) (“Knowling Interview”).

disingenuously attempts to change its story, its claims, as well as those of other commenters, do not withstand scrutiny.

Installation Timeliness. Through July 2000, Verizon has provided competitors with more than 13,000 xDSL-capable loops. While the volume of DSL loop orders has increased consistently, the DTE has found that “[t]he more experience VZ-MA gains, the better its performance becomes.” DTE Eval. at 305. According to the DTE, “provisioning intervals . . . are decreasing, as are the percentage of missed installation appointments.” Id.

Indeed, the DTE found that CLECs receive installation appointments within the interval they request “approximately 99 percent of the time.” Id. at 306. And Verizon is providing service on time, within those requested installation intervals. During June and July, for example, Verizon’s on-time performance for provisioning DSL loops met, or exceeded, 95 percent in each of the separate reporting categories included in Verizon’s Performance Assurance Plan (“PAP”). See id.; Guerard/Canny Decl. Att. M. The on-time measurements included in the PAP provide the most accurate reflection of Verizon’s performance because they exclude factors that are outside of Verizon’s control, including “no access” situations where Verizon cannot gain entry to a customer’s premises, and “no facilities” situations where no spare facilities are available. For this reason, both the DTE and the New York PSC have adopted these on-time measurements for the purpose of assessing financial penalties in the performance assurance plans.

Verizon’s performance under the missed appointment measures adopted in the Carrier-to-Carrier performance reports in both Massachusetts and New York “further buttresses” the evidence that Verizon is installing wholesale DSL orders on time, and in parity with retail. Texas Order ¶ 295. From May through July, Verizon missed approximately 3 percent of appointments for CLECs compared to approximately 2 percent for its own retail DSL customers.

See Lacouture/Ruesterholz Rep. Decl. ¶ 58. This is comparable to the single-digit missed appointment rate approved in the Texas Order, and the sole percentage point difference is hardly competitively significant, particularly in light of the fact that DSL loop orders are significantly more complicated than Verizon's retail orders. Indeed, in the Texas Order, the Commission found acceptable comparative performance levels that were similar to those here. See Texas Order ¶ 297 n.830 (approving missed installation appointment rate of 7.7 percent for CLEC DSL orders compared to 6.5 percent retail orders). And while the August work stoppage and subsequent recovery efforts necessarily affected the results for August and September, by September the missed appointment rate already had returned to single-digit levels and was similarly comparable to retail. See Lacouture/Ruesterholz Rep. Decl. ¶ 58.

The DOJ has not disagreed with these performance results that demonstrate that Verizon is providing DSL loops on time. But it expressed concern that Verizon's reported performance on certain installation interval measures does not on its face demonstrate parity, focusing in particular on the measure of the percentage of orders completed in six days (PR-3-10). See DOJ Eval. at 10 & n.33. The DTE concluded, however, that the fact that the reported interval measures have "not yet reached formal parity . . . does not . . . support a finding of non-compliance with the requirements of the checklist." DTE Eval. at 305. As this Commission itself has found, these types of interval measures can be "flawed" because statistically significant differences in reported results may not be "the result of discriminatory conduct, but rather . . . the result of factors outside of [Verizon's] control and unrelated to the timeliness and quality of [Verizon's] provisioning." New York Order ¶ 202. In order to gain an accurate sense of Verizon's performance, it is therefore necessary to look behind the performance intervals. See

id., ¶¶ 202, 204-210 (according “little weight” to average completed interval performance measures and relying instead on other data to evaluate Verizon’s performance).

The same type of flaws that the Commission has concluded affect other interval measures also affect the installation interval measures at issue here, and this is especially true in the case of PR-3-10 (which is a new measure reported for the first time in July). As the DTE found, a principal “flaw” inherent in the installation interval measures for DSL loops is that they do not account for the fact that many CLEC loop orders have not been pre-qualified and, therefore, require a manual loop qualification that adds up to three extra days to the interval that would otherwise apply.⁶ As the DTE stated, “[i]t is only logical that this added step [of performing a manual loop qualification] would increase provisioning intervals for CLECs, thus making it appear that VZ-MA’s performance for CLECs is out of parity, when in fact it is not out of parity.” DTE Eval. at 306. One of the largest data CLECs — Rhythms — likewise concedes that the need to perform manual qualifications on many CLEC DSL loop orders necessarily adds to the time it takes Verizon to provision that order (though it mistakenly omits the fact that, in addition to the 48 hours Verizon has to perform a manual loop qualification, it has an additional

⁶ Covad claims (at 14) that the failure of CLECs to pre-qualify loops cannot be the cause of the reported performance difference because it says that only 15 percent of its orders require a manual loop qualification. As the DTE found, however, Verizon “performed over 11,000 manual loop qualifications in Massachusetts for CLECs since the beginning of this year.” DTE Eval. at 306. Indeed, the CLEC-by-CLEC data previously submitted by Verizon show that, while the percentage of Covad loop orders that are pre-qualified has increased in recent months, the percentage of loop orders from other CLECs that are pre-qualified has varied widely. See Ex Parte Letter from May Chan, Director, Regulatory Matters, Verizon, to Magalie Salas, Secretary, FCC (Oct. 13, 2000). Overall, approximately 40 percent of CLEC DSL loop orders were not pre-qualified in July. See id. And while overall CLEC performance has improved since, nearly 30 percent of DSL loop orders still were not pre-qualified in September. See Guerard/Canny Rep. Decl. Att. A at 2.

24 hours to report to CLECs the results).⁷ In addition, the interval measures incorrectly include orders where the CLECs actually requested a longer interval than was available to them, which this Commission previously found appropriately should be excluded from a measure of Verizon's performance. See New York Order ¶ 204. They also fail to take into account instances in which no facilities were available, which the Massachusetts DTE and the New York PSC have concluded should not be counted against Verizon for purposes of determining on-time performance under the Performance Assurance Plan.⁸

Indeed, Verizon demonstrated in its application that, once CLECs' behavior with respect to just one of these factors (manual loop qualifications) is taken into account, the intervals within which Verizon provides DSL loops to competitors are comparable to the intervals within which Verizon provides its own retail DSL services. See Application at 24; Lacouture/Ruesterholz Decl. ¶ 101. Because unbundled DSL loops generally require a dispatch and are significantly more difficult to install than retail DSL services, this means that CLECs actually receive service that is superior to what Verizon provides itself. See Application at 25. The DOJ nonetheless contends that "it is difficult or impossible to verify Verizon's reformulated performance calculations and analysis because Verizon has not provided the data underlying" these calculations. DOJ Eval. at 11. But the data that Verizon provided were in the very same format, and with the same level of detail, as the performance measurements that the DOJ does find

⁷ Rhythms claims (at 34) that Verizon should be held responsible when CLECs perform manual loop qualifications because there are no pre-ordering capabilities for CLEC to submit manual queries before submitting an order. But the reason there are no such capabilities is that no CLEC has previously requested that Verizon develop such a pre-order transaction, even though the Change Management Process permits them to do so.

⁸ Verizon has raised the fact that PR-3-10 is deeply flawed with the Carrier-to-Carrier Working Group in the New York DSL Collaborative, and expects soon to be able to propose a consensus modification. See Guerard/Canny Rep. Decl. ¶ 7.

reliable. See Guerard/Canny Decl. Att. K. The difference is that the recalculated performance data provided with the application include only wholesale orders that had been appropriately pre-qualified. See id. ¶¶ 79-81.

While this alone should be the end of the issue, Dr. Gertner also analyzed the orders included in PR-3-10 to determine whether that particular measure is in fact skewed by the CLECs' own behavior. See Guerard/Canny Rep. Decl. ¶ 14; Gertner/Bamberger Rep. Decl. ¶¶ 5-6, 21. The results of that study demonstrate that it unquestionably is. In particular, that measure includes loops that have not been pre-qualified, and therefore have an interval of up to nine (rather than six) days. See Gertner/Bamberger Rep. Decl. ¶ 21. It also incorrectly includes orders where CLECs requested an interval of longer than six days. See id. And while not all of these factors are readily measurable from available records, those that account for the majority of the difference between wholesale and retail orders in the reported results. See id. ¶¶ 22-24.

Of course, as was true in New York, the findings of the Gertner/Bamberger study are also confirmed by other performance measures that the Commission found to be better indicators of Verizon's performance. See New York Order ¶¶ 200, 208-209. As noted above, Verizon's on-time performance consistently meets or exceeds the 95-percent on-time performance standard for the measures included in the PAP in non-strike affected months. See Lacouture/Ruesterholz Rep. Decl. ¶ 59. Verizon also consistently gives CLECs the due dates they request, see Guerard/Canny Decl. ¶ 77, and gives them intervals that are comparable to Verizon's own retail DSL service, see Gertner/Bamberger Rep. Decl. ¶¶ 14-20. Combined with the fact that Verizon's missed installation appointment is very low, see Guerard/Canny Decl. ¶ 77 & Att. J,

this provides still further corroborating proof that CLECs are getting service on-time, when they want it.

Finally, Covad complains (at 22-23) that Verizon's provisioning performance worsened during the August work stoppage. As addressed further below, however, the strike necessarily affected Verizon's reported performance for August and the subsequent recovery period. But the simple fact is that Verizon undertook Herculean efforts to ensure that CLECs received service that was at least as good as that available to Verizon's own retail customers during this period. This is why Covad's own Chairman has conceded that Verizon deserves "a lot of credit. They have done a wonderful job. I would highly commend Ivan Seidenberg's organization for really stepping up. And it has been surprising how well they have rebounded in terms of meeting service expectations for me." Knowling Interview at 6.

Installation Quality. Based on its exhaustive review — and on admissions by Covad and other CLECs that they engage in behavior that skews Verizon's reported performance measures for installation troubles — the DTE found that "VZ-MA provides nondiscriminatory access to loop installation for xDSL loops." DTE Eval. at 314. The DOJ does not dispute this finding, but notes instead (at 12-13) that it has not itself "been able to determine whether Verizon's objections to the performance measures are valid."⁹ As the DTE correctly concluded, they are valid. And once the CLECs' own behavior is taken into account, it is apparent that Verizon is providing nondiscriminatory access to CLECs.

⁹ Although the DOJ does not mention it, Verizon supplied in its Application detailed order-by-order and CLEC-by-CLEC analysis to support its claims, the very information that the DOJ suggests is necessary to evaluate Verizon's performance. See, e.g., DOJ Eval. at 11 (claiming that "data underlying . . . reformulated performance calculations," including individual CLEC performance reports, would be sufficient "to verify or refute Verizon's restated performance").

Although the Commission has found that “trouble reports within 30 days” is one relevant measure of installation quality performance, see New York Order ¶ 222; Texas Order ¶ 299, the DTE determined that, based on evidence from the state proceedings, it would “not accord a significant amount of weight to this metric” because Verizon’s performance under this metric had been skewed by “the conduct of some CLECs in playing an angle in the system.” DTE Eval. at 313-14. In particular, during hearings before the DTE, several CLECs — including Covad — admitted engaging in the practice of “accepting loops that, absent additional work by VZ-MA, could not support xDSL service . . . and then, immediately thereafter, filing trouble tickets to obtain loop conditioning.” Id. at 313; see also id. at 312-13 (rejecting as unpersuasive Covad’s excuse for engaging in this practice).¹⁰

As Verizon demonstrated in its application, this practice is widespread. More than 80 percent of the trouble tickets that CLECs have submitted on DSL loops were for loops either where no trouble was found to exist, or where properly conducted acceptance testing would have demonstrated that a loop was not suitable at the time the CLEC received it. See Application at 25-26; Lacouture/Ruesterholz Decl. ¶¶ 104-105.¹¹ Indeed, in July, some 70 percent of the CLEC

¹⁰ While Covad was among the CLECs that admitted engaging in this practice, see Aug. 22, 2000 Oral Argument at 3427 (App. B, Tab 233), Covad nonetheless is the only CLEC that challenges the DTE’s conclusion on this issue here. But when the trouble reports that Covad submitted on loops that it certified were working are excluded from the July performance data, Covad’s installation trouble report rate is better than the retail rate. See Lacouture/Ruesterholz Rep. Decl. ¶ 67.

¹¹ Covad claims (at 16) that Verizon admits that “at least 44% of the *loops* Verizon delivered to Covad were non-functioning loops.” This is a blatant mischaracterization. What Verizon stated in the Application was that 56 percent of the installation *trouble reports* submitted by Covad resulted in no trouble found. See Lacouture/Ruesterholz Decl. ¶ 105. Covad submits trouble reports for only a small fraction of its loops, and the fact that most of these trouble reports result in no trouble found demonstrate that an even smaller fraction of its loops have actual troubles of any kind. See Lacouture/Ruesterholz Rep. Decl. ¶ 67. Verizon’s data indeed confirm that the percentage of Covad loop orders that actually experience troubles is in the low single digits. See id.

installation trouble reports were for loops that the CLECs tested at the time of installation and certified as working. See Lacouture/Ruesterholz Rep. Decl. ¶ 66.

As further proof that Verizon is providing nondiscriminatory performance, Drs. Gertner and Bamberger performed a study of all CLEC orders in July for which a trouble report was issued within 30 days. See Gertner/Bamberger Rep. Decl. ¶ 25. Their study excluded orders for which CLECs had provided a serial number indicating that they had tested the loop and certified it as working. See id. And their study found that, when such loops are excluded, the percentage of CLEC orders with trouble tickets within 30 days is *lower* than Verizon's retail trouble report rate (2.69 percent compared to 2.97 percent). See id.

Moreover, as in New York, the results of the Gertner/Bamberger study are confirmed by Verizon's strong performance on other measures that the Commission has found probative of loop quality performance. In particular, "CLECs submit significantly fewer repeat trouble reports on xDSL loops than does VZ-MA for its retail customers." DTE Eval. at 321. As the DTE explained, "[t]his metric demonstrates that once CLECs receive loops that are appropriate for xDSL service, they experience fewer problems than VZ-MA." Id.; see also New York Order ¶ 222 ("In determining the quality of maintenance and repair work performed by Bell Atlantic for competing carriers, we examine the rate of trouble reported by customers of competing carriers as compared with Bell Atlantic's own retail customers, *as well as the rate of repeat reports of trouble.*") (emphasis added). All of this further confirms the accuracy of the DTE's conclusion that Verizon does not discriminate against CLECs in the quality of the loops that are installed.

Maintenance and Repair. The DTE found that "VZ-MA provides maintenance and repair for CLEC xDSL loops in substantially the same time and manner as it does for its retail

customers.” DTE Eval. at 322. In fact, while the missed repair appointment rates for CLECs in July was comparable to the retail rate, notwithstanding the impact of the August work stoppage, the missed appointment rate for CLECs in August and September was actually better than for retail. See Guerard/Canny Decl. Att. E at 10, 24, 38; Guerard/Canny Rep. Decl. Att. D at 10, 25.

In contrast to the missed appointment measures, measures of repair intervals are subject to the same infirmities as other interval measures. For example, the DTE observed that on average the reported results reflect a somewhat longer time to repair CLEC xDSL loops than to repair retail loops, but it noted that the “repair of xDSL loops requires coordination between VZ-MA and the CLEC,” and that, as for other interval measures, “VZ-MA’s maintenance and repair performance is hindered by” CLEC practices. DTE Eval. at 319, 320. In particular, the DTE found that the reported maintenance and repair measures are affected by the “CLECs’ inability to identify the source of the trouble,” “by the propensity of some CLECs to accept loops they concede are unable to support xDSL service absent additional work by VZ-MA technicians,” and by “the preference for Monday and not weekend repair appointments.” Id. at 320.

Covad nonetheless claims (at 20) that, in July, CLEC customers had to wait a day more than Verizon’s customers to have service restored. But if the reported results are adjusted to take the factors cited by the DTE into account, it is apparent that CLECs are receiving nondiscriminatory performance. First, as the DTE recognized, because Verizon’s repair personnel are being forced to “condition” and effectively “re-provision” loops that were never capable of supporting xDSL service, a small percentage of CLEC “repair” requests take longer to close and thus drive up the average. See Lacouture/Ruesterholz Rep. Decl. ¶ 71. If the repair intervals are adjusted to exclude only those requests that appear to be attributable to these types of provisioning issues, then the reported difference between mean time to repair for wholesale

and retail orders is reduced to only nine hours for July and three hours for September. See Lacouture/Ruesterholz Rep. Decl. ¶ 72.

Second, the reported difference is reduced further still by considering the documented propensity of CLECs to decline weekend repair appointments, which necessarily lengthens the average repair interval. See Lacouture/Ruesterholz Rep. Decl. ¶ 73. When this additional factor is taken into account, the reported difference for wholesale and retail orders is reduced to only five hours for July and is eliminated entirely for September. See id.

Third, as Verizon demonstrated in its application, another major impediment to completing repairs for CLECs on time is the inability to gain access to the premises of the customer. For example, from April through July 2000, Verizon was unable to gain access nearly 59 percent of the time for CLECs' complex loop repair requests compared to only 3.4 percent of the requests from Verizon's own retail customers. See Lacouture/Ruesterholz Decl. ¶ 106.¹² These persistent no-access situations adversely affect Verizon's ability to complete CLEC maintenance and repair requests on time, both because Verizon is prevented from completing the repair for the affected customer *and* because Verizon technicians waste time that could be spent attending to requests from other customers where the technicians could gain access. See DTE Eval. at 320 ("It is only logical that an unnecessary dispatch means that the VZ-MA technician is unable to attend to a bona fide trouble that much sooner.").

¹² NAS claims (at 4) that Verizon's failure to provide CLECs with a no-access confirmation before leaving the end user premises is an unreasonable provisioning procedure. But when Verizon looked at a sample of 12 NAS orders during a week in October it found that, for nine of the 12 orders, when Verizon's technicians could not gain access to NAS's customer to complete the order, they called NAS and received a serial number and informed NAS why the order could not be completed. See Lacouture/Ruesterholz Rep. Decl. ¶ 93 & Att. L.

Although Covad concedes that “no access” situations are a cause of the reported differences in repair intervals,¹³ it nevertheless attempts to blame Verizon for many of these situations.¹⁴ But the Commission has found that “it is [not] appropriate to include legitimate ‘no access’ situations in a measure of missed appointments.” New York Order ¶ 326. Moreover, it is clear from the record that CLECs other than Covad have implemented practices that attempt to minimize or avoid no-access situations. Rhythms, for example, boasts (at 31) that its operations center is “open seven days a week to assist Verizon with customer access situations,” and that it “does not decline Saturday appointments” or “limit repair times.”

Again, other measures corroborate the fact that Verizon is providing non-discriminatory service. In particular, the missed repair appointment measure confirms that Verizon is making its repair appointments on time, and is making them as often for CLECs as for itself (and even more often in the most recent months notwithstanding the impact of the strike). The measure also tends to confirm that no access situations are affecting the mean time to repair measure: while no access is excluded from the missed appointment measure, which reflects superior performance for CLECs, it is not excluded from mean time to repair, which shows a somewhat longer interval for CLECs. And as the DTE recognized, the fact that the repeat trouble report rate for CLECs is lower than for Verizon itself demonstrates that Verizon is not only making its appointments on time, but that it is getting the problem fixed on the first try more often for CLECs than for itself. See DTE Eval. at 321.

¹³ See Covad at 21 (“Both Verizon and Covad agree that no-access issues are a barrier to successful loop provisioning.”).

¹⁴ Contrary to Covad’s claims, however, Verizon has already agreed to participate in a collaborative process to reduce no-access situations. See DTE Eval. at 310 (“earlier this year, changes to the cooperative testing procedures were instituted” to address no-access situations).

DSL Measures. The only other claims that CLECs make with respect to DSL are that Verizon's DSL performance data have not been independently validated by a third party, see Covad at 34-35; WorldCom at 50-51, and that Verizon has refused to provide carrier-specific performance reports, see Covad at 25 & n.50; WorldCom at 51. Neither claim has merit.

First, KPMG did validate Verizon's performance data for unbundled loops as a whole, including DSL loops. See Guerard/Canny Rep. Decl. ¶ 31. Although Verizon now reports performance data for DSL loops separately, this does not provide grounds for KPMG to conduct a second, duplicative review. In any event, Drs. Gertner and Bamberger did replicate Verizon's DSL performance data, and they confirmed Verizon's reported results. See Gertner/Bamberger Rep. Decl. ¶ 12.

Second, CLECs never raised the issue of carrier-specific performance reports before the DTE, and it is therefore improper for them to raise it for the first time here. Moreover, the DTE never required Verizon to provide such reports. In any event, Verizon is willing to produce carrier-specific performance as soon as it reasonably can in light of the fact that such reports are extremely time consuming to prepare. See Guerard/Canny Rep. Decl. ¶ 28.

Finally, any concerns regarding Verizon's DSL performance data should be mitigated even further when Verizon's separate data affiliate becomes fully operational (in accordance with the so-called "steady state" requirements adopted by the Commission) at the end of December. The relationship between the separate data affiliate in Massachusetts and Verizon will be the same as that between the separate data affiliate in New York and Verizon. See Application at 27; New York Order ¶¶ 330-31. And as described in the application, this separate data affiliate will obtain service from Verizon using the exact same systems and interfaces as competitive carriers. See Lacouture/Ruesterholz Decl. ¶ 112.

B. Pricing of Network Elements.

The principal additional complaint by commenters here concerns the rates set by the DTE for unbundled switching, which is one component of the rate for an unbundled network element platform. The DTE found that the switching rates that it set comply fully with the Commission's TELRIC methodology, however, and any disputes about this determination are now firmly a thing of the past. On October 13, 2000, Verizon voluntarily filed and the DTE approved a new tariff that reduces Verizon's switching rates to the levels that are "virtually identical to those same costs for New York, which the FCC already found to be reasonable and in compliance with TELRIC in the Bell Atlantic New York Order." DTE Eval. at 223; see Collins Rep. Decl. ¶ 4.¹⁵ As the DTE has noted, this new rate "should put to rest any arguments that UNE rates in Massachusetts are not TELRIC-compliant." DTE Eval. at 223; see New York Order ¶ 242 ("We conclude that [Verizon] provides sufficient evidence to demonstrate that its switch costs are based on forward-looking, long-run incremental costs."); AT&T Corp. v. FCC, 220 F.3d 607, 617 (D.C. Cir. 2000) ("The FCC's decision seems reasonable to us.").

WorldCom — the main critic of Verizon's prices throughout the state proceedings — does not dispute that Verizon's new switching rates in Massachusetts are comparable to those in New York, but instead argues (at 9) that the record does not contain enough evidence to determine whether the rates in Massachusetts "provide an adequate margin for competition."¹⁶

¹⁵ The average total switch-related and transport rates that WorldCom complained about are now exactly the same in Massachusetts as in New York (\$0.006802 per minute). See Collins Rep. Decl. ¶ 13. The only reason that the individual rate elements in Massachusetts and New York are not perfectly identical is because of "differences in rate structure" in these two states — e.g., different geographic pricing zones and different local calling options — that preclude exact comparison of individual rate elements. See DTE Eval. at 222-23; Collins Rep. Decl. ¶ 7.

¹⁶ WorldCom's claim is directly contradicted by a much smaller competitor in Massachusetts, Z-Tel, which states (at 4) that Verizon's new rates "will enable Z-Tel to increase

This is nonsense: WorldCom is already serving more than 400,000 customers in New York over platforms that it has leased at the very same rates that are now available in Massachusetts.¹⁷

WorldCom can no longer use the fact that rates in Massachusetts are different from rates in New York as an excuse for its failure to enter the mass market in Massachusetts. This is especially true because WorldCom has acknowledged that “[p]ricing is definitely the issue that is stopping us from entering.”¹⁸

In any event, the Commission has found that, in determining whether a wholesale rate comports with the 1996 Act, “the difference between [Verizon’s] wholesale rates and retail rates” is irrelevant. New York Order ¶ 382; see also DTE Eval. at 220 (describing WorldCom’s profit-margin argument as a “red herring” that “is not relevant to determining compliance with the checklist”). Rather, the critical inquiry is “whether those rates comply with basic TELRIC principles.” AT&T Corp. v. FCC, 220 F.3d at 615.¹⁹ And this Commission previously held that the same rates that are now in effect in Massachusetts do so comply. See New York Order ¶ 242.

its marketing efforts in Massachusetts, and bring the benefits of competition to residential customers in Massachusetts.”

¹⁷ See Investors Business Daily, Aug. 15, 2000.

¹⁸ Aug. 22, 2000 Oral Argument at 4629 (App. B, Tab 233); see also WorldCom at 33 (“In Massachusetts, the problem is undeniably with the UNE Pricing.”); Proferes et al. Decl. ¶ 12 (“where UNE-P pricing is available at reasonable, cost-based rates, WorldCom is competing vigorously for residential local customers”).

¹⁹ See also New York Order ¶ 237 (“BOC must show that its prices for interconnection and unbundled network elements are based on forward-looking, long-run incremental costs”); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 290 (1997) (“Michigan Order”) (“for purposes of checklist compliance, prices for interconnection and unbundled network elements must be based on TELRIC principles”); DTE Eval. at 220 (key inquiry is “whether UNE rates are based on TELRIC — not how those TELRIC rates compare to retail rates”).

Moreover, the commenters are equally wrong to the extent they imply that the DTE has not lived up to the task of establishing rates more generally. The DTE conducted extensive proceedings to establish prices for network elements. These proceedings took place over the course of more than four years and involved briefing from all interested parties, the submission of cost studies, and literally thousands of pages of direct testimony and cross-examination of witnesses. See DTE Eval. at 3-12, 204-05. And throughout these proceedings, the DTE “consistently and faithfully applied the FCC’s TELRIC methodology.” Id. at 223.²⁰ In fact, some of the rates established by the DTE were among the most aggressive in the nation — for example, the loop rate in downtown Boston is the third lowest metropolitan loop rate in the country,²¹ and the wholesale discounts established by the DTE are the largest in the country.²²

The DTE’s unequivocal determination that it established prices for network elements based on the Commission’s TELRIC methodology is entitled to great deference, as the Commission itself has found. Section 252(c)(2) gives state commissions the primary role to

²⁰ See also DTE Eval. at 202 (“The status quo in Massachusetts is use of the FCC’s TELRIC and avoided cost methods.”); id. at 204 (“The recurring and non-recurring UNE prices in Massachusetts were established in a series of decisions in Phase 4 of the Department’s Consolidated Arbitrations docket, where the Department and its arbitrator were guided by the FCC’s own directives on how to calculate TELRIC.”); id. at 213 (“VZ-MA’s network element prices in Massachusetts unquestionably are based on the TELRIC of providing those elements. VZ-MA is charging the recurring and non-recurring rates that were approved by the Department pursuant to the TELRIC methodology. The Department has established UNE prices in Massachusetts consistent with basic TELRIC principles.”); id. at 214 n.650 (citing to DTE orders containing “a more thorough and detailed discussion of the Department’s findings and rationale related to TELRIC inputs”).

²¹ WorldCom also argues (at 29-31) that Verizon’s loop costs are too high. But the DTE determined that these rates comply with TELRIC. See DTE Eval. at 213. In fact, the loop rate in Massachusetts is, on average, comparable to the loop rate in New York, and in some parts of Massachusetts (e.g., downtown Boston) it is lower than New York.

²² See also DOJ Eval. at 6 (noting that “active resale market” in Massachusetts is “likely due, in large part, to the relatively high discount rate”).